

ANN BAVENDER*
JAMES A. CASEY
KARLEN L. CASBER*
ANNE GOODWIN CRUMP*
VINCENT J. CURTIS, JR.
PAUL J. FELDMAN*
ERIC FISHMAN*
RICHARD HILDRETH
EDWARD W. HUMMERS, JR.
FRANK R. JAZZO
CHARLES H. KENNEDY*
KATHRYN A. KLEIMAN
PATRICIA A. MAHONEY
M. VERONICA PASTOR*
GEORGE PETRUTSAS
LEONARD R. RAISH
JAMES P. RILEY
MARVIN ROSENBERG
KATHLEEN VICTORY*
HOWARD M. WEISS
* NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH, P.L.C.

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET

ROSSLYN, VIRGINIA 22209-3801

(703) 812-0400

TELECOPIER

(703) 812-0486

INTERNET

HILDRETH@ATTMAIL.COM

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FRANK U. FLETCHER

COMMISSIONER FOR INTERNATIONAL AND
INTERGOVERNMENTAL AFFAIRS
SHELDON J. KRYG
U. S. AMBASSADOR (ret.)

OF COUNSEL
EDWARD A. CAINE*

WRITER'S NUMBER
(703) 812-

BY HAND
DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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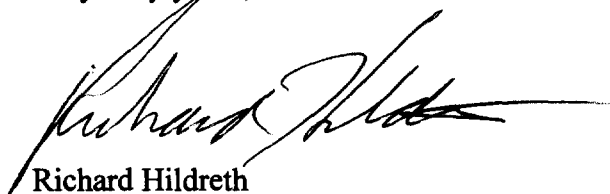
Re: Amendment of Section 73.606(b)
Table of Allotments, TV Broadcast Stations (Pueblo, Colorado)
MM Docket No. 93-191, RM-8088

Dear Mr. Caton:

On behalf of The Pikes Peak Broadcasting Company, licensee of Stations KRDO-TV, Colorado Springs, Colorado, and KJCT-TV, Grand Junction, Colorado, there is transmitted an original and fourteen copies of its "Opposition to Joint Application for Review" in reference to the above-captioned matter.

Should any questions arise concerning this matter, please contact this office.

Very truly yours,



Richard Hildreth
Counsel for
The Pikes Peak Broadcasting Company

RH/bll
Enclosures

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Before the
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

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Table of Allotments,
TV Broadcast Stations,
(Pueblo, Colorado)

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MM Docket No. 93-191
RM-8088

To: The Commission

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OPPOSITION TO JOINT APPLICATION FOR REVIEW

Richard Hildreth
Kathleen Victory

Counsel for
The Pikes Peak Broadcasting Company

Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th Street
11th Floor
Rosslyn, Virginia 22209
(703) 812-0400

August 29, 1995

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SUMMARY OF ARGUMENT

What the Commission has before it is a rather simple matter. Sangre de Cristo Communications ("SCC"), licensee of KOAA-TV, Channel 5, Pueblo, Colorado, is short-spaced and is precluded from moving its transmitting site to Cheyenne Mountain which is the location of the Colorado Springs television stations. It is also the site to which the Pueblo educational station KSTC, Channel *8, licensed to the University of Southern Colorado ("University"), was granted an extraordinary waiver because of its operation as an educational station and its declared desire to provide educational service to both Pueblo and Colorado Springs, which are served by the University. What has now developed is an effort by the commercial station to use the Commission's channel exchange policy to move to the Cheyenne Mountain television site by taking over the University construction permit. The Commission staff in the *Report and Order* granted the channel swap sought by SCC but did so at the present site of Stations KOAA-TV and KTSC, noting that it was not appropriate to decide at the allotment rulemaking stage whether a waiver of a short-spacing rule should be granted to a commercial licensee. It is that action that enrages SCC, which obviously does not wish to go to the Commission and try to justify a short-spacing waiver at Cheyenne Mountain as a commercial operation. The arguments that SCC is somehow a Siamese twin of University and that the Commission's consideration of University's request for waiver was raised *res adjudicata* when it comes to SCC is legally and factually wrong. There is no justification whatsoever for the Commission to do anything more than that which it has done; namely, grant the exchange of channels but require that SCC justify a short-spacing waiver on its own should it wish to do so.

The arguments of SCC that various other matters should have been consolidated with the rulemaking utterly lacks merit. There is nothing in the other proceedings that would require such consolidation and to do so would simply result in delay and confusion. The Commission has absolute discretion as to whether or not matters should be consolidated and here in exercising that discretion here, it determined that there should not be.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

**RECEIVED
AUG 29 1995**

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Amendment of Sections 73.606(b),)	MM Docket No. 93-191
Table of Allotments,)	RM-8088
TV Broadcast Stations,)	
(Pueblo, Colorado))	

To: The Commission

OPPOSITION TO JOINT APPLICATION FOR REVIEW

The Pikes Peak Broadcasting Company ("Pikes Peak"), licensee of Stations KRDO-TV, Colorado Springs, Colorado, and KJCT-TV, Grand Junction, Colorado, by its attorneys, hereby opposes the "Joint Application for Review" (the "Petition") filed on August 14, 1995 by Sangre de Cristo Communications, Inc. ("SCC"), licensee of commercial Television Station KOAA-TV, Channel 5, Pueblo, Colorado and the University of Southern Colorado ("University"), licensee of non-commercial educational Television Station KTSC-TV, Channel *8, Pueblo, Colorado, (hereinafter jointly referred to as "Petitioners"). The Petition seeks Commission review of the decision of the Chief of the Mass Media Bureau's Allocations Branch (the "Staff") granting in part the proposal contained in Petitioners petition to exchange their television channel assignments pursuant to Section 1.420(h) of the Commission's Rules.¹ The Staff Decision was correct and the instant Petition should be denied. With respect thereto, the following is

¹ *Amendment of Section 73.606(b), Table of Allotment, TV Broadcast Station, (Pueblo, Colorado)*, MM Docket No. 93-191 (July 14, 1995) (the "Staff Decision" in the "Exchange Proceeding"). While a *Notice of Proposed Rule Making* ("NPRM") was adopted, the staff, quite properly, excluded from the exchange a construction permit specially issued to University for a short-spaced television transmitter site on Cheyenne Mountain (the "Cheyenne Mountain Permit"). See *Notice of Proposed Rule Making*, MM Docket 93-191, released July 13, 1993

respectfully stated:

I. STANDING

Pikes Peak, as the licensee of Station KRDO-TV, Colorado Springs, and Station KJCT-TV, Grand Junction, Colorado, has a particular interest in this matter. The Petitioners, both licensees of stations licensed to Pueblo, Colorado, acknowledge that their intent and desire is to increase and improve the coverage of Colorado Springs, Colorado, by Station KOAA-TV and not by the permittee, KTSC. Any station serving the Colorado Springs area will necessarily compete with Pikes Peak Station KRDO-TV for audience. Additionally, the authorized but unconstructed KTSC(TV) transmitter site on Cheyenne Mountain is short-spaced with the Pikes Peak Station KJCT-TV at Grand Junction, Colorado². Thus, Pikes Peak has standing to file this Opposition. *Sanders Brothers Radio Station v. FCC*, 309 U.S. 642, 84 L. Ed 869, (1940).

II. INTRODUCTION

The channel exchange demands of SCC stem from the existence of an authorization for a short-spaced educational television transmitter site issued to University to relocate the KTSC transmitter site to Cheyenne Mountain. The waiver was not opposed by the licensee (Pikes Peak) of the station impacted by the short-spacing (KJCT-TV, Grand Junction, Colorado) solely because of its general support for educational television. In granting the waiver and application, the Commission did so because of the "unique role of many noncommercial stations in providing public television service to a wide area" and specifically University's need to serve both Pueblo

² The site is also short-spaced to what was a vacant allotment for Channel *8 at Laramie, Wyoming. An application for that allotment was subsequently filed by Central Wyoming College (File No. BPET-921210KE).

and Colorado Springs. A commercial station such as KOAA-TV would never have been granted such a waiver.

The principal mover in this scheme, SCC, operates commercial television Station KOAA-TV, Channel 5, Pueblo, Colorado, which is prevented from obtaining a site on Cheyenne Mountain because of short-spacing. Now, using University's Station KTSC operating on educational Channel *8 as the vehicle, SCC seeks to obtain the Channel *8 authorization at a short-spaced transmitter site on Cheyenne Mountain. That SCC's proposal would leave University operating from the site that University advised the FCC was inadequate has been conveniently ignored. Recognizing that no improved educational television service would result and that the exceptional waiver granted University no longer applied, the proposal for the channel exchange was granted but the demand that it include University's special short-spacing was properly rejected by the Staff. This did not, however, preclude SCC from asking for its own short-spaced waiver on "swapped" Channel 5.

III. THE ISSUES

According to SCC (and University), the Petition raises two issues for review:

1. Did the Staff err in refusing to approve the Channel Swap and to include the Cheyenne Mountain Permit?
 2. Did the Staff err in Denying the Consolidation Motion?
- A. **The Channel Swap Scheme To Assign University's Cheyenne Mountain Permit Was Properly Denied**

The Petition declares that the Staff Decision "refusing" to grant the channel exchange proposal submitted by the Petitioners somehow "defies logic and patently ignores the public

interest." Petition, p. 2. As an initial matter, SCC (and University) flatly stated in their Joint Comments that SCC did not intend to pursue the proposed exchange if it was approved pursuant to the terms set forth in the *NPRM*³, *i.e.*, absent the Cheyenne Mountain Permit.⁴ As the Petitioners well knew⁵, proponents of a rule making are required to confirm their intention to go forward with the action proposed in an *NPRM* and the failure to do so can result in a denial of the proposal. The alternatives advanced by Petitioners in their joint comments filed in response to the *NPRM* and were rejected. The same arguments were advanced in Petitioners' "Petition for Issuance of Notice of Proposed Rulemaking to Exchange Channels" and they too were rejected. Whether Petitioners like it or not, the question has been thoroughly explored on two occasions and the position of Petitioners found wanting.

B. The Only Interest Served By Petitioners' Proposal Is That Of SCC -- The Public Interest Is Given Short Shrift

Petitioners argue that the Staff, in denying the requested channel exchange, ignored the public interest, which they say necessarily mandated a grant, including the Cheyenne Mountain construction permit. Petition, p. 1, 13-14. Petitioners, relying to some extent upon information not presented to the Staff,⁶ argue that the Staff is oblivious of the financial and technical benefits to be gained by University from a grant of the channel exchange that includes the Cheyenne

³ The Petitioners confirm this position in the Petition. Petition, p. 21, n. 54.

⁴ See Exhibit D to Petition, Joint Comments of the University of Southern Colorado and Sangre de Cristo Communications, Inc., p. 3.

⁵ See *Notice of Proposed Rule Making*, DA 93-742 ("NPRM"), issued July 13, 1993, ¶13; appendix ¶2.

⁶ *Id.*, at p.14, n. 36.

Mountain Permit. That is simply not so. The *NPRM*, as well as the *Report and Order*, fully recognized the payoff SCC dangled before University and the obvious fact that SCC was seeking to use an allocation waiver granted to University solely because of its educational nature and the need, so University said, to bring educational television programming to Colorado Springs via a transmitter on Cheyenne Mountain and not just by a translator. Now, however, University's good intentions have been compromised, not because of public interest benefits, but because of the monetary benefit to University of the monetary consideration flowing to it.⁷ Even that factor cannot be considered in a vacuum since examination of the facts as a whole establish that despite the monetary incentive, the technical "benefits" running to University and purportedly to the public, do not exist. University is now operating at full power at the Baculite Mesa site, where it would remain under SCC's proposal. University serves Colorado Springs via a translator K15BX which it built with its own funds with no help from SCC. While University is the licensee of 11 translators and is carried on many more, University has now been granted authority to operate four more TV translators and is carried on 34 translators according to the *1995 Television and Cable Factbook*. The translators are not the equivalent of University's expected coverage from Cheyenne Mountain. From a technical standpoint, the handing over of its construction permit for Cheyenne Mountain to SCC gives University a net loss.

⁷ This payoff is not as clear as the Petitioners would have it. SCC will pay University \$150,000. Thereafter University will depend on the interest accruing from an "endowment" to produce approximately \$50,000 per year. University will not have the one million dollars touted by the Petitioners, but only \$150,000 plus \$50,000 or less per year for programming. See statement of Gregory Sinn attached as Exhibit 1 to the Petitioner's exchange petition which is attached as Exhibit B to the Petition.

Central to the channel exchange proposal submitted by the Petitioners⁸ is the Cheyenne Mountain Permit. In seeking the Cheyenne Mountain Permit and the extraordinary short-spacing waiver, University argued that no other suitable sites would achieve its goal of expanded non-commercial service without translators which were not believed to be adequate. Since, according to University, operation of KTSC from Cheyenne Mountain was the optimal means of providing and improving its service to Colorado Springs, this meant that service from its existing Baculite Mesa site cannot be anything but a degradation of its expected service to Colorado Springs. If, as argued by the Petitioners in their exchange proposal, the use of a translator will remedy the decrease in potential service to Colorado Springs that would occur if their proposal is granted, then the channel exchange is unnecessary and will not serve the public interest since University already operates SCC's television translator K15BX serving Colorado Springs from Cheyenne Mountain.⁹ Moreover, on August 22, 1995, the Chief, Low Power Television Branch finding that University's financial qualifications were not a problem, granted the pending applications for four additional translators to serve western Colorado.¹⁰

The FCC's exchange policy was never intended to allow a commercial station to take advantage of a spacing waiver solely granted to an educational station on the basis of the nature of its operations and the need for expanded educational television service. If University

⁸ See Exhibit B to the Petition.

⁹ Moreover, if this translator service alleviated University's problem of service to Colorado Springs, then the Cheyenne Mountain Permit and the short-spacing waiver were unnecessary in the first instance. University did not inform the Commission of its operations on K15BX at the time the waiver request was being considered.

¹⁰ See, Letter grant from Keith A. Larson, dated August 22, 1995.

broadcasts the same service it currently provides from Baculite Mesa including rebroadcasting its signal to Colorado Springs via translator, the very basis of the waiver permitting University to relocate to Cheyenne Mountain will no longer exist. If that permit is "swapped," the only beneficiary will be SCC, a result that is totally unjustified, even should University be paid off by SCC. University has been granted four more translators on the Western Slope¹¹ but the expanded coverage via these translators cannot be considered a benefit resulting from the exchange. University can proceed with the four new translators with or without FCC action on its Cheyenne Mountain permit. It should not be forgotten that the object of the exchange policy is improved noncommercial coverage, yet here, the only benefit to University arising from the proposed exchange is monetary.

In the Commission's order adopting the channel exchange policy¹², the Commission stated that "opponents of specific proposals will have ample opportunity to demonstrate that the petitioners may not have bargained in good faith to benefit the public." *Id.* at 1464a, ¶34. Despite the ostensible purpose for the exchange presented by the Petitioners, their underlying intent is clear. SCC is willing to pay University to obtain a site it could not otherwise legitimately obtain and University is willing, for money, and money alone, to forgo the

¹¹ Contrary to Petitioners' claim, the Staff did not fail to recognize the role of translator service. Petition, p. 16. The Staff instead explained, consistent with FCC policy that the substitution of a secondary service, albeit widely used in Colorado, for primary service does not count in weighing the public interest benefits of a proposed channel exchange. *See*, the *Staff Decision*, attached as Exhibit A to the Petition, ¶5.

¹² *Amendment to the Television Table of Assignments to Change Noncommercial Educational Reservations*, 59 RR2d 1455 (1986) (the "*Channel Exchange Order*"), *recon. den.*, 3 FCC Rcd 2517 (1988).

expansion of its noncommercial service which would result from the move to the Cheyenne Mountain. SCC's acknowledgment that it did not intend to go forward with the proposed exchange unless it was assigned the Cheyenne Mountain permit emphasizes that its primary goal in the proposed exchange, in fact, was to circumvent the Commission's rules in order to obtain a transmitter site on Cheyenne Mountain, rather than to serve the public interest. Moreover, SCC's refusal to try for a Channel 5 short-spaced waiver on its own is an admission that it would not be successful in trying to do so.

C. The Decision Not To Assign The Cheyenne Mountain Permit To SCC Was Proper And Fully Justified

Petitioners argue that the spacing waiver to allow University to move its transmitter site to Cheyenne Mountain is somehow *res judicata* with respect to SCC and that the Commission is therefore forbidden by law from considering whether SCC should be assigned the permit at that site. Assuming, *arguendo*, that the grant of the Cheyenne Mountain short-spacing waiver is *res judicata* to University¹³, the same does not necessarily apply to SCC. *Res judicata* renders the decision on an adjudicated issue conclusive as to the same parties in the same action or subsequent proceeding. Nothing in the principal of *res judicata* indicates that the extraordinary waiver request, granted to University on the basis of University's status as a noncommercial licensee and its need to expand its noncommercial educational service to Colorado Springs,

¹³ While the objective of *res judicata* have validity in administrative proceedings, the *res judicata* "principle cannot be transported bodily from the judicial to the administrative realm. Instead, as Kenneth Davis has observed, "The sound view is . . . to use the doctrine of *res judicata* when the reasons for it are present in full force, to modify it when modification is needed, and to reject it when the reasons against it outweigh those in favor.'" *Administrative Law*, Ernest Gellhorn, 1985, p. 400, citing 2 K. Davis, Admin. L. Treatise 548 (1958).

should apply to a commercial licensee seeking to expand its service beyond its licensed market.¹⁴

It is a fundamental principal of American Jurisprudence, that cases and issues are decided on a case by case basis. Thus, while the Commission decided that the extraordinary short-spacing waiver to a noncommercial station was justified in order to promote the goals of noncommercial educational programming, the most important element in the Staff's grant of the short-spacing waiver, University's status as a licensee of a noncommercial station, is not present with respect to SCC. The Petitioners refuse to admit this fact.

Notably, Petitioners do not argue (and, given the fervency of their Petition, clearly do not believe) that SCC could obtain a short-spacing waiver for the same site if it sought it in its own name. Instead, Petitioners argue that the Commission does not, and may not, distinguish between licensees on the basis of their commercial or noncommercial programming, for to do so would be to violate the First Amendment's prohibition against content-based regulation. Petition, p. 8. Petitioners manipulate the facts. The Staff granted the waiver to University not based upon the content of its programming but upon its status as a noncommercial licensee, stating: "The Commission is mindful of the unique role played by many noncommercial television stations in providing public service to wide areas. You have established that University serves both the Pueblo and Colorado Springs areas and that it is important that your television station do so as well." (Petition, Exhibit F, p. 2)

¹⁴ *Res Judicata* requires (1) a final decision; (2) the same claim in more than one proceeding; (3) the same parties; (4) proper jurisdiction by the agency; and (5) the issue was actually adjudicated. *Administrative Law*, Walter Gellhorn, 1985, p.400-401

Petitioners further declare that the Staff's determination not to include the Cheyenne Mountain permit as part of the facilities exchange proposal was contrary to Commission precedent and the channel exchange rules. In support of this position, Petitioners cite to the reference to "permittees" in Section 1.420(h), as well as a Commission statement in the Channel Exchange Order that the policy would apply to permittees. Petitioners also argue that neither the rule nor the Channel Exchange Order distinguish between a permit for new station and a permit for modification of licensed facilities.¹⁵ While the Channel Exchange Order stated that the channel exchange policy would not be limited to licensees, Petitioners have taken the reference out of context. The order states:

The Commission also finds it unnecessary to limit the availability of this procedure to licensees. In certain instances the consideration provided by commercial operators may enable noncommercial permittees to build stations and commence service on channels which might otherwise remain vacant. Therefore, the rule will apply to permittees. Petitioning parties should, however, provide credible assurances . . . that any consideration received will be used to construct and operate a noncommercial educational station.¹⁶

Thus, contrary to Petitioners' assertion, the Commission clearly did distinguish between permits for new stations and permits to modify licensed facilities. Here, University's station KTSC is already built and in operation and has been for a number of years. The channel is not vacant. Thus, the exchange policy, which is intended to get noncommercial stations built and placed in operation, specifies factors not present here.

There is nothing in the *Channel Exchange Order*, nor any other authority cited by the

¹⁵ Petition, p. 5.

¹⁶ *Channel Exchange Order*, at 1464a (emphasis added).

Petitioners, to indicate that the Commission intended to allow an operating noncommercial licensee to exchange an unbuilt, expired CP granted only as the result of an extraordinary short-spacing waiver, as part of a channel exchange. The exchange policy allows, but does not require, favorable Commission consideration of a proposal whereby a noncommercial station might exchange channels with a commercial station. The principal cases cited by SCC do not support, much less mandate, its insistence that the Commission must ignore the overriding public interest considerations in deciding whether or not to grant a channel exchange and if so, under what circumstances. In granting one of the exchanges cited by the Petitioners, *Amendment of Section 73.606(b) (Clermont and Cocoa, Florida)*, 4 FCC Rcd 8320, 8322 n. 5 (1989), the Commission expressly required that before the preferred site the commercial proponent sought as part of the exchange could be used, the commercial facility would be required to file, and the Commission to consider and grant, a modification application to specify the new site. More importantly, in both the Clermont-Cocoa case and the Gary Indiana case (5 Fed Reg 30364 August 26, 1986), the noncommercial stations had not been granted a short-spacing waiver for their respective transmitter sites, and had never evidenced any intention of moving to the site desired by the commercial station seeking the channel exchange. That permits, as opposed to licenses, were involved is of no help to SCC. The authorizations held by the noncommercial organizations, except for the channel, remained the same. The areas and populations to be served were unchanged. Unlike the case here, there was nothing extraordinary about those exchanges.

Petitioners have utterly failed to establish any basis for overturning the Staff Decision with respect to the exclusion of the Cheyenne Mountain Permit with the channel exchange. Without the Cheyenne Mountain Permit, the Petitioners have indicated that they are not

interested in the exchange. That is their problem. The Staff Decision was reasoned, comports with FCC precedent and should be sustained.

D. The Motion To Consolidate Had No Place In The Instant Proceeding And Was Properly Denied

The Petitioners insist that its was "prejudicial procedural error" for the Staff to deny Petitioner's Motion for Consolidation while agreeing that the disposition of the channel "swap" matter will resolve the controversy. That what the staff did was not to Petitioners' liking does not create prejudicial error, or any error at all. Petition, p. 20. Petitioners' attempt to categorize the challenges to the various machinations engaged in by SCC in its ongoing efforts to lock up University's Cheyenne Mountain short-spaced waiver and permit are not convincing. The so-called challenges are not related to each other nor to the Exchange Proceeding as such. Indeed, it was noted in the Staff Decision that to the extent that the so-called challenges are in any way related to each other or the Exchange Proceeding, they involve legal arguments and considerations which are outside the scope of the Exchange Proceeding. The Staff Decision concisely set forth its rationale in rejecting Petitioners request for consolidation. Staff Decision, ¶¶9-14.

That University sought and obtained an extraordinary short-spacing waiver for the Cheyenne Mountain site based upon its unique role as a noncommercial commercial station needing to expand and continue its service to Colorado Springs without relying on translators is a fact. University certified that it was financially qualified. The Cheyenne Mountain Permit expired on February 29, 1993 and no construction had commenced. An untimely application was filed requesting an extension of that authorization (BPET-930216KE). The sole basis for the

requested extension was to permit University to exchange the permit for the short-spaced site for SCC's existing site and facilities on Baculite Mesa. The extension request failed to comply with the standards for permit extensions imposed by Section 73.3534 of the Commission's rules.¹⁷ While there is an incidental relationship between the Cheyenne Mountain Permit extension request and the Exchange Proceeding arising merely from the similarity of facts underlying the proposed actions, the extension request is a separate legal matter which the Commission must address independently and pursuant to different procedural and legal criteria.

A non-challenge matter is that there exists pending applications for extension of SCC's construction permit and STA for Television Translator K15BX, a facility operated by University from a site on Cheyenne Mountain, are another example. The construction permit was issued to SCC in March 1987. It was obtained as the result of an anticipated displacement of SCC's television translator Station K30AA by the potential activation of Station KPCS, Channel 32, Pueblo, Colorado. The displacement never occurred. The KPCS authorization was canceled in March 1991. Nonetheless, SCC never relinquished the CP for the displacement translator. The facility was constructed, and has been operated, by University¹⁸ (not SCC) since 1990 pursuant to an STA sought by and issued to SCC. The facility has never been licensed. The K15BX CP

¹⁷ As noted by the Staff in the *NPRM*, the pendency of the exchange proceeding might provide a basis for an extension of time to construct, "it does not absolve [University] from its commitment to complete the construction of KTSC(TV)'s modified facilities." *NPRM*, 8 FCC Rcd 4752, 4753, n. 4.

¹⁸ Ironically, University previously operated a translator serving Colorado Springs but that translator was displaced when Station KWHD(TV), Channel 53, began operation at Castle Rock, Colorado. Yet University is not the holder of the displacement CP. SCC continues to operate television translator K30AA.

expired by its own terms. SCC filed for the reinstatement (BMPTT-911105JF). Since the anticipated displacement never occurred there is no legal basis upon which to reinstate the CP. The question, thus, is whether SCC should continue to hold a CP for a displacement translator when its translator is in no peril of displacement when it should properly be licensed to University, an action Pikes Peak fully supports. This too is a matter separate from the Exchange Rulemaking Proceeding and must be considered independently by the Commission.

Although the Commission's rules contemplate the consolidation of multiple proceedings involving substantially similar issues, Petitioners' cite to no Commission rule or precedent which provides for consolidated consideration of separate and distinct issues raised against parties in an unrelated proceeding. There is, and was, no basis for the consolidation of the proceedings as requested by the Petitioners. The Pikes Peak challenges stand alone and are outside of the Exchange Rulemaking Proceeding. The consolidation of the Pikes Peak challenges with the Exchange Rulemaking Proceeding would only obfuscate the issues raised in, and the resolution of, that rulemaking.

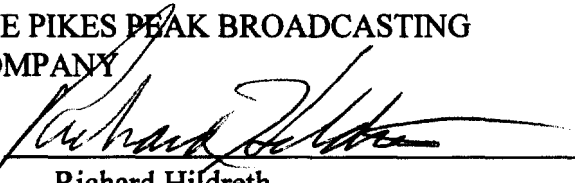
IV. CONCLUSION

Petitioner's claims of error are unfounded. The Petitioners having failed to establish any legal basis for review, Pikes Peak respectfully requests that the Application for Review filed by the University of Southern Colorado and Sangre de Cristo Communications, Inc. be denied.

Respectfully submitted,

THE PIKES PEAK BROADCASTING
COMPANY

By


Richard Hildreth
Kathleen Victory

Its Attorneys

FLETCHER, HEALD & HILDRETH, P.L.C.
1300 North 17th Street, 11th Floor
Rosslyn, VA 22209
(703) 812-0400

August 29, 1995

pikespea.p

CERTIFICATE OF SERVICE

I, Barbara Lyle, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C. do hereby certify that true copies of the foregoing "Opposition to Joint Application for Review" were sent this 29th day of August, 1995, by first class United States mail, postage prepaid, to the following:

John A. Karousos*
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
Room 318, 1919 M Street, N.W.
Washington, D.C. 20554

Clay Pendarvis*
Chief, Television Branch
Federal Communications Commission
Room 700, 1919 M Street, N.W.
Washington, D.C. 20554

Roy J. Stewart*
Chief, Mass Media Bureau
Federal Communications Commission
Room 314, 1919 M Street, N.W.
Washington, D.C. 20554

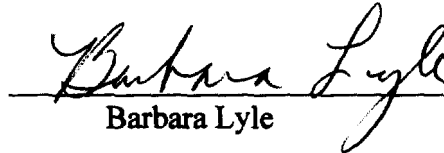
Barbara Kreisman*
Chief, Video Services Division
Federal Communications Commission
Room 702, 1919 M Street, N.W.
Washington, D.C. 20554

James L. Winson, Esq.
Rubin, Winston, Diercks, Harris & Cooke
1739 M Street, N.W.
Washington, D.C. 20036
Counsel for KKTU, Inc.

Kevin F. Reed, Esq.
Suzanne M. Perry, Esq.
Elizabeth A. McGear, Esq.
Dow, Lohnes & Albertson
Suite 500
1255 23rd Street, N.W.
Washington, D.C. 20037
Counsel for Sangre de Cristo Communications, Inc.

Wayne Coy, Jr.
Cohn & Marks
Suite 600
1333 New Hampshire Avenue
Washington, D.C. 20036
Counsel for University of Southern Colorado

*By Hand Delivery


Barbara Lyle